**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

LETTERS PATENT APPEAL NO. 51 OF 2002

Shri. Satpute Bandu Shankar ... Appellant

Vs.

Shri. Shivaji Education Society and Others ... Respondents

Mr. Mihir Desai for Appellant.

Mr. S.S. Deshpande for Respondent Nos. 1 and 2.

CORAM : F.I. REBELLO & ANOOP V. MOHTA,JJ.

DATED : SEPTEMBER 03, 2004

P.C. :

1. On behalf of the appellant, the learned counsel points out that the judgment in Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam BNabi & Ors. 1998 (2) Bom.C.R.146 the ratio will have to be restricted to only those cases where the teacher cannot be appointed on permanent basis in clear vacancy. It is pointed out that the Apex Court was merely considering question before it namely letter of appointment where the appellant was purely temporary for the period of 11 months. It is pointed out that if the rules framed under Maharashtra Employees of Private School Regulation Act, 1977 are concerned, conjoint reading of Rule 6

and rule 9 and rule 10 would show that a temporary employee is one who is appointed to temporary vacancy in the fixed period. Such temporary appointments can be made under the Rules (9). Such temporary appointment can also be made in case of leave vacancy or in the event a teacher holds lien on the post. All other cases, it is contended where there is regular vacancy has to be filled in terms of Section 5 (2) of the Act and after following due procedure. Even if such appointment is styled as temporary for all purposes it is to be considered as appointment on probation. The Management, it is contended cannot defeat the statutory provisions by resorting to temporary appointments in clear vacancy except in contingencies as referred to earlier. The issue in Hindustan it is pointed out was one such exception.

2. It is not possible for us to consider the judgement in Hindustan (supra) based on what is urged by the learned counsel. As the said judgment is not available before us, we leave it open to the learned counsel to raise that issue in appropriate proceedings.

3. On the facts of the present case, we find from

the order of the Tribunal as of the learned Single Judge that the appointment of the appellant was against reserved category post and in these circumstances, even though Petitioner had worked for two years, he could not be treated as deemed probationer. We do not find that judgement of the learned Single Judge suffers from any error of law. In the light of that appeal dismissed. No order as to costs.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)